IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/01/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.P. No.11777 OF 2000

1. Union of India
rep. by its Secretary
Ministry of Water Resources
New Delhi 110 001

2. The Chairman
Central Ground Water Board
Faridabad (Haryana)

3. The Chairman
Union Public Service Commission
New Delhi

-Vs-

1. The Central Administrative Tribunal
Madras Bench, Madras

2. Shobh Nath Ram
Superintending Engineering
Central Ground Water Board
South Eastern Coastal Region
Rajaji Bhavan
Chennai 600 090 :: Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Certiorari as stated in the petition

For Petitioners :: Mr. K. Sridhar
Addl.C.G.S.C.

For Respondents :: Mr. R.N. Amarnath (R2)

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

Central Government comes before us by way of a challenge to the order of the Central Administrative Tribunal (in short "the Tribunal") only in so far as it pertains to the observations made by the Tribunal in paragraphs 5 and 6 of it observations, the Tribunal has held that the method of recruitment for the two posts of Regional Director, earmarked for the officers from the Engineering stream, was discriminatory and, therefore, struck down the method of recruitment for the two posts with the further direction that the recruitment to the posts of Regional Director meant for the Engineering stream should be done only by promotion from the feeder category of Superintending Engineers posted in Central Ground Water Board (CGWB).

2. The original applicant/second respondent herein had filed the aforementioned original application before the Tribunal and had contended therein that he was working as a Superintending Engineer since July 1987 and he was the senior-most S ng Engineer in the respondent Board. He pointed out that there was a Flexible Complementing Scheme with the aid of which, persons who had held the post of Scientists D could go to the next higher grade irrespective of the availability of the vacancy in the next higher grade and they would keep on discharging the duties meant for the posts in the lower grade. However, they were to be benefited with the salary in the next higher grade. The further contention was that this benefit of Flexible Complement ing Scheme was denied to the persons like the respondent herein, who were from the Engineering stream in contradistinction to the officers from the Scientific stream.

3. It was pointed out that the Scientific stream was created for the first time by the Central Ground Water Board (Regional Directors) Recruitment Rules (in short "the Rules") by the respondent Board and the officers from the Scientific str osen for a favourable treatment in the matter of promotion. It was further alleged that the said rules were ultra vires Articles 14 and 16 of the Constitution of India. In the original application before the Tribunal, the applicant sought the following prayers:
"(a) the Hon"ble Tribunal be pleased to declare the Central Ground Water Board (Regional Director) Recruitment Rules, 1996 ultra vires Articles 14 and 16 of the Constitution; and
(b) the Hon"ble Tribunal be pleased to award costs of this application to the applicant.
In so far as the interim relief was concerned, the following was the prayer:
"the Hon"ble Tribunal be pleased to stay the operation and further implementation of the Central Ground Water Board (Regional Director) Recruitment Rules, 1996.

4. It is an admitted position that after the original application was entertained by the Tribunal, there was no stay order granted. The basis of the applicant"s contention, which appears from ground (a) to (f), was that he was denied the n on from the post of Superintending Engineer to the post of Regional Director.

5. We have scanned the grounds to find that no particular rule was in any manner challenged before the Tribunal. What was tried to be

highlighted was that the officers from the Scientific stream and the officers from the Engineers stream w reated differently inasmuch as while the said scheme was made applicable to the officers from the Scientific stream and in the process they were benefited, the scheme was not made available to the officers who came from the Engineering stream like the or iginal applicant. In ground (e), it was stated that though the employees in the pay scale of Rs.4100-5300 were made eligible under the rules for consideration for promotion to the post of Regional Director, no engineers were working in the Board in the said pay-scale and, therefore, it would be only the outsiders who would be considered for the said promotion leaving aside the officers from the Engineering stream in the respondent Board and thereby their promotion chances were completely wiped out. Th is, according to the original applicant, also resulted in hundred per cent promotional avenues becoming available to the officers from the Scientist stream but no promotional avenues being available to the officers from the Engineering stream. In short, the whole dispute was about the promotion of the respondent to the post of Regional Director.

5. During the pendency of the original application, however, the original applicant was selected to the promotional post of Regional Director, which is reflected from paragraph 16 of the counter. This promotion was on the basis of the adve loated by the Union Public Service Commission for which the respondent applied and was ultimately selected in the general post. In fact, the selection of the original applicant to the post of Regional Director should have been the end of the matter beca use by that selection his all the prayers were answered favourably. Under the circumstances, there was no reason for the Tribunal to proceed with the application or to examine the constitutionality of the rules. However, the Tribunal, by its order, whi ch is impugned before us, struck down a particular provision in the rules regarding the promotion whereby it was provided that the two posts of Regional Director earmarked for the officers from the Engineering stream could be filled in by promotion/trans fer on deputation (including short-term contract). The Tribunal has made an observation that the rule which pertained to the filling up of the two posts of Regional Director earmarked for the Engineering stream was bad in so far as it provided for the appointment of the concerned officer by transfer on deputation (including the short term contract). According to the Tribunal, this could have resulted in the loss of opportunities to the officers from the Engineering stream for whom only two posts were earmarked out of sixteen posts. It is an admitted position that under the rules fourteen posts were earmarked for the officers from the Scientific stream and they could be filled in only by the officers with five years of regular service in the Scienti sts D grade whereas in so far as the two posts earmarked for the Engineering stream was concerned, it could be filled in only by promotion/transfer on deputation (including short term contract). The Tribunal found fault with this.

6. The Central Government and the Central Ground Water Board, feeling aggrieved by these observations of the Tribunal made in paragraphs 5 and 6 of this order, come up before us by way of this writ petition.

7. Learned Central Government Standing Counsel points out that it was wholly unnecessary for the Tribunal to have entered into the arena

of constitutionality of the concerned rule particularly when there was no occasion or a cause of action so. We have been taken through the whole application and we find that the only prayer made is for declaring the whole rules unconstitutional, without there being any consequential prayer for promotion. It is for this purpose that we have quoted the pra yer completely. This is apart from the fact that during the pendency of the original application, the second respondent herein was actually promoted to the post of Regional Director. Once he was promoted, there was no question of any challenge remaining because it is a trite position in law that the courts do not go into the question of constitutionality of the rules or any enactment in vacuum. The whole original application had become infructuous because of the promotion of the second respondent here in because that was the sole objective with which the application was filed. Once that promotion was granted, there was no question of entertaining the challenge to the constitutionality of the said rules. There was no question of "deemed date" becaus e obviously a promotion cannot be a matter of right and unless the posts by way of promotion became available, there could not have been appointments of either the second respondent herein or any one else. It is not the case of the second respondent bef ore the Tribunal that he was side-stepped by some one else brought by way of transfer on deputation on the basis of the challenged rule to occupy the post of Regional Director. The Tribunal had found that the challenge in so far as the discriminatory at titude to the officers from the Scientific stream was concerned, it could not be upheld and that there were two clear categories of officers, i.e. officers from the Scientific stream and officers from the Engineering stream. The Tribunal, therefore, uph eld the constitutional validity of the rules but while doing so, the Tribunal has gone into the question of validity of the particular provision in the rules pertaining to the promotion of the officers from the Engineering stream to the post of Regional Director, i.e. filling up of the said posts by Promotion/Transfer on Deputation (including short term contract). In our view, the Tribunal could not have gone into that question more particularly because the respondent was already promoted. It was, the refore, an academic finding and such academic finding in the matter of constitutional validity of any rules or enactment has always to be avoided and that is the trite law.

8. Even otherwise, we cannot agree with the Tribunal's rationale in finding fault with the rules. After all, these rules had the sanction of Art.309 of the Constitution of India. If it was the policy of the Government to fill up the posts l Directors by promoting the concerned officers or by bringing them from outside by way of transfer on deputation, no fault could be found with it. For that reason alone, the rules could not have been found to be unconstitutional. There was no question of any discrimination or arbitrariness shown in framing of these rules; nor was anything contended to suggest that the concerned authority did not have the legislative competence to frame the rules. We do not know as to how the

concerned provision in t he rules was found fault with on the ground that it would jeopardise the promotional prospects of the officers like the second respondent herein.

9. Learned Central Government Standing Counsel points out

that at that time enough number of officers were not available for promotion at all because even for the purposes of promotion, the authorities had to consider the cases of at least s per post. According to the learned standing counsel, at that time there were only four persons available and, therefore, there could not have been a process of promotion.

10. We entirely agree with the contention of the learned Central Government Standing Counsel and in that view, we would set aside the order of the Tribunal to the extent it has been assailed. The Tribunal has not given any good reason for he part of the particular rule to be unconstitutional. Merely because the rule enables the Government to fill up the two posts of Regional Director earmarked for the officers from the Engineering stream by bringing the officers on transfer on deputation , the rule cannot be viewed as an arbitrary or discriminatory rule. In that view, we set aside the order of the Tribunal to the extent that it has been assailed.

11. The writ petition succeeds to the extent that we have indicated above. Rule is made absolute.

Index:Yes
Website:Yes

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To:
The Registrar
Central Administrative Tribunal
Madras Bench
Madras